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56 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
89 TL Harvey,
10 Plaintiff,
11 v.
12 Maxwell & Morgan P.C., et al.,
13 Defendants.
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No. CV-24-00276-PHX-KML

ORDER

15 Defendants William Day, John Coleman, Raymond Nieves, Audrey Gibson, Dallas
 16 Paulsen, FirstService Residential of Arizona, LLC, and Rancho El Dorado Homeowners
 17 Association (collectively, “defendants”) seek an award of approximately \$35,000 in
 18 attorneys’ fees.¹ (Doc. 73.) Plaintiff TL Harvey argues his federal claims were not frivolous
 19 and therefore defendants are not entitled to an award of fees. (Doc. 77 at 1.) Not all of
 20 Harvey’s federal claims were frivolous and defendants did not identify which fees would
 21 not have been incurred but for defending the non-frivolous federal claims. The motion for
 22 attorneys’ fees is denied.

23 In addressing motions to dismiss Harvey’s amended complaint, the court identified
 24 fourteen claims Harvey appeared to be pursuing. (Doc. 63 at 3-4.) Those claims included
 25 constitutional claims, racial discrimination in the making or enforcing of contracts, breach
 26 of contract, violations of the Fair Housing Act, civil RICO, criminal mail fraud, common

27 ¹ Defendants also seek an award of \$60.52 in costs under A.R.S. § 12-341 and Fed. R. Civ.
 28 P. 54(d). Local Rule 54.2(a) required defendants file a bill of costs within fourteen days of
 final judgment. Defendants did not comply with that rule and do not offer any explanation
 why. The request for costs is denied based on the failure to comply with the applicable rule.

1 law fraud, and breach of fiduciary duty. It is undisputed some of Harvey’s state and federal
 2 claims allow for an award of attorneys’ fees to a prevailing defendant. *See A.R.S. § 12-*
 3 *341.01 (breach of contract); Green v. Mercy Hous., Inc.*, 991 F.3d 1056, 1058 (9th Cir.
 4 2021) (Fair Housing Act); *Harris v. Maricopa Cnty. Superior Ct.*, 631 F.3d 963, 975-76
 5 (9th Cir. 2011) (Section 1983 claims). But the standard for awarding fees differs between
 6 state and federal law.

7 Arizona’s fee-shifting statute allows for an award of attorneys’ fees to the
 8 “successful party” in a breach of contract action. A.R.S. § 12-341.01(A). Under this statute,
 9 Arizona courts do not require a successful plaintiff make a different showing than a
 10 successful defendant. *Cf. Schwartz v. Farmers Ins. Co. of Arizona*, 800 P.2d 20, 25 (Ariz.
 11 Ct. App. 1990) (applying same test to successful defendant as to successful plaintiff).
 12 Federal law differs. Under the federal fee-shifting statutes relevant here, prevailing
 13 plaintiffs are awarded fees “as a matter of course.” *Harris*, 631 F.3d at 971. But prevailing
 14 defendants are awarded fees “only in exceptional circumstances.” *Id.* (simplified). Under
 15 the federal standard, a prevailing defendant may recover fees only after showing the federal
 16 claims were “frivolous, unreasonable, or without foundation, even though not brought in
 17 subjective bad faith.” *Id.* (quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412,
 18 421 (1978)).

19 When a plaintiff is pursuing both state and non-frivolous federal claims, prevailing
 20 defendants are entitled only to the fees that “would not have been incurred but for the
 21 inclusion of” the state claims. *Id.* at 972. That is, if some of the federal claims were not
 22 frivolous, “the only fees that may be awarded are those incurred for work performed
 23 exclusively in order to provide a defense against” the state-law claims or frivolous federal
 24 claims. *Id.* at 973.

25 Defendants’ motion for attorneys’ fees argues all of Harvey’s federal claims were
 26 frivolous. A claim is frivolous if the result was “obvious” or the claim was “wholly without
 27 merit.” *Galen v. Cnty. of Los Angeles*, 477 F.3d 652, 666 (9th Cir. 2007). Many of Harvey’s
 28 federal claims came perilously close to frivolous. For example, Harvey’s claims that

1 defendants could be sued for violating his constitutional rights were dubious and the court
 2 dismissed those claims without leave to amend. (Doc. 63 at 7.) But Harvey's federal claims
 3 involving the Fair Housing Act ("FHA") were not frivolous. In addressing those claims the
 4 court explained "[h]omeowners associations . . . may be liable under the FHA in certain
 5 situations." (Doc. 63 at 9.) Harvey had not alleged sufficient facts to state an FHA claim,
 6 but the court granted him leave to amend because it appeared possible he could state one.
 7 (Doc. 63 at 9-10.) Harvey did not amend but it was not "obvious" he had no viable FHA
 8 claim.

9 Harvey also alleged a claim under 42 U.S.C. § 1981 which prohibits purposeful
 10 racial discrimination in the making or enforcing of contracts. Harvey did not have any
 11 plausible § 1981 claim against "each and every defendant," so his § 1981 claim against
 12 certain defendants at least came close to frivolous. But it was possible Harvey had a viable
 13 § 1981 claim against the homeowners association and he was granted leave to amend that
 14 claim. (Doc. 63 at 8.) Based on the limited information available regarding the § 1981
 15 claim, it was weak but not wholly without merit. *See Gammel v. Kuna Rural Fire Prot.*
 16 *Dist.*, No. 1:19-CV-00390-REP, 2021 WL 5165675, at *2 (D. Idaho Nov. 5, 2021) ("Just
 17 because a claim is weak does not mean it is frivolous.").

18 Neither Harvey's FHA claims nor his § 1981 claim qualified as frivolous under the
 19 demanding standard. Defendants cannot recover fees incurred in litigating those claims.
 20 The presence of nonfrivolous federal claims means defendants' burden to disentangle the
 21 recoverable fees from the nonrecoverable fees was "from a practical standpoint extremely
 22 difficult to carry." *Harris*, 631 F.3d at 972. Defendants' motion for attorneys' fees does
 23 not attempt to identify which fees were incurred in defending against which claim, so the
 24 motion is denied.

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1 Accordingly,

2 **IT IS ORDERED** the Motion for Attorneys' Fees and Costs (Doc. 72) is **DENIED**.

3 Dated this 8th day of July, 2025.

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6 **Honorable Krissa M. Lanham**
7 **United States District Judge**

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